

Title	<b>Requiring Written Acceptance of Settlement Offers</b> (amend Code of Civil Procedure Section 998)
Summary	Legislation would be sponsored by the Judicial Council to amend Code of Civil Procedure section 998 to require the acceptance of settlement offers to be in writing.
Source	Civil and Small Claims Advisory Committee
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov Daniel Pone, Senior Attorney, Office of Governmental Affairs, 916-323-3121, daniel.pone@jud.ca.gov
Discussion	<p>Code of Civil Procedure (CCP) section 998 requires an offer to compromise to be in writing. (CCP sec. 998(b).) However, the statute does not have a parallel provision expressly stating that the acceptance must also be in writing. To avoid confusion that can arise with oral acceptances, the statute should be amended to require that acceptance of a section 998 offer must be in writing.</p> <p>In the case of <i>Bias v. Wright</i> (2002) 103 Cal.App.4th 811, the Fourth District Court of Appeal held that an offer under CCP section 998 may be accepted orally, but only if the offer does not require another mode of acceptance, and only if the offer is absolute and unequivocal. The court noted that oral acceptances of section 998 offers pose significant problems:</p> <p style="padding-left: 40px;">Section 998 was designed to encourage settlements of disputes through a straightforward and expedited procedure. Section 998, subdivision (b)(1) provides that upon receipt of an offer of proof and acceptance, the clerk of the court should perform the ministerial task entering judgment according to the parties' agreement. When the filed proof of acceptance relates to an oral acceptance, the effectiveness of this mechanism is substantially weakened. When a proof of acceptance refers to an oral acceptance, the clerk of the court must review the description of the acceptance in the proof of acceptance to determine whether it sufficiently describes an absolute, unqualified timely acceptance made in the correct mode. An opposing party may then contend there actually was no oral agreement or, as here, contend the oral acceptance and written proof of acceptance were not the same. (<i>Bias v. Wright</i>, 103 Cal.App.4<sup>th</sup> at 819.)</p>

In response to these concerns, the *Bias* court urged the Legislature to revise CCP 998 in the following passage:

"Because the trial court and a clerk are not authorized to adjudicate a dispute over the terms of section 998 agreements before entering judgment, the additional layer of review imposed by oral acceptance permits unnecessary controversy. In view of the importance of section 998 procedures and judgments in the practice of law and the problems posed by the present statute, we urge the Legislature to revise the statute to expressly require that acceptance and proof of acceptance of a section 998 offer must be in writing. In the meantime, we suggest that parties who serve offers under section 998 state in the offers that acceptances must be in writing." (*Id.*, emphasis added).

Requiring that the acceptance be in writing would assist the litigants by bringing further clarity to section 998 procedures, which should help avoid unnecessary litigation and conserve judicial resources.

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Attachment

Code of Civil procedure section 998(b) would be amended to read:

§ 998

- (a) The costs allowed under Section 1031 and 1032 shall be withheld or augmented as provided in this section.
- (b) Not less than 10 days prior to commencement of trial or arbitration (as provided in Section 1281 or 1295) of a dispute to be resolved by arbitration, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. Any acceptance of the offer shall be in writing.
  - (1) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly. In the case of an arbitration, the offer with proof of acceptance shall be filed with the arbitrator or arbitrators who shall promptly render an award accordingly.
  - (2) If the offer is not accepted prior to trial or arbitration, within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial or arbitration.
  - (3) For purposes of this subdivision, a trial or arbitration shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, and if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.
- (c) \* \* \*